

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 717 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?-Yes.
2. To be referred to the Reporter or not?-Yes. :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?-No.
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No. :

JOSHI RATILAL LAXMISHANKER

Versus

TRUSTEES OF SHETH GOKULDAS HANSRAJ TRANTUKAR MOMORIAL TR.

Appearance:

MR CH VORA for Petitioner

MR YS MANKAD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/03/2000

ORAL JUDGEMENT

1. The petitioner is the tenant, against whom the respondent-plaintiff Trust had filed Regular Civil Suit No.57 of 1979 in the Court of learned Civil Judge (J.D.), at Mandvi.

2. It is the case of the plaintiffs in the suit that

the plaintiff-Trust is duly registered under the provisions of the Bombay Public Trusts At. That the defendant is a tenant of the suit shop Nos. 10 and 11 at a monthly rent of Rs.62.52 Ps. According to the plaintiff, the rent from 17.1.1978 for 12 months, amounting to Rs.750.24 Ps. is due from the defendant. Therefore, the defendant was served with a demand notice on 1.2.1979 and he was asked to pay arrears of rent. The defendant had sent Rs.500.60 Ps., along with his reply dated 21.12.1979. Said amount was accepted by the plaintiffs without prejudice to their rights as the aforesaid amount was not covering the entire amount of arrears of rent. Thereafter, the defendant sent Rs.375/- on 22.3.1979, but it was not accepted by the plaintiffs as the same was not tendered within one month from the receipt of the suit notice. The plaintiffs, therefore, filed the aforesaid suit for getting possession of the suit premises on the ground of arrears of rent as well as on the ground of nuisance as well as on the ground that the defendant had denied the title of the plaintiffs.

3. The defendant appeared in the suit and filed written statement at Exhibit 19. The defendant contended that the rented premises belongs to Sheth Gopaldas Trust and that at the instance of one Govindgar, he was paying the rent to the present plaintiffs. According to the defendant, since the shop belongs to Gusai Panch, the Trustees of the said Panch are necessary parties to the suit. The defendant also denied that he was irregular in payment of rent. According to him, he had paid Rs.381.40 on 16.9.1979, but the said amount was not credited in the account books and that, therefore, he was not in arrears of rent, as alleged in the suit notice. It was stated that even the amount, which was sent towards rent, was not accepted by the plaintiff on the ground that it was not sent within time. He also denied the ground of nuisance etc., raised in the plaint.

4. The trial Court framed various issues at Exhibit 25. The trial court, after recording the evidence and after hearing the parties, came to the conclusion that the plaintiff is the landlord of the suit premises and that the plaintiff has proved that the defendant is in arrears of rent for more than 6 months. Therefore, ultimately, on the ground of arrears of rent, the decree for possession was passed by the trial court and rest of the grounds were negatived by the trial court.

5. The decree of the trial court was challenged by the defendant-tenant by filing Regular Civil Appeal No.120 of 1981 in the Court of the learned District

Judge, Kutch at Bhuj. Said appeal was heard by the learned District Judge, Kutch at Bhuj, who, by his judgment and order dated 31.12.1985, dismissed the said appeal, with costs.

6. The original defendant-tenant has preferred this Revision Application under Section 29(2) of the Bombay Rent Act against the aforesaid order of the appellate court.

7. At the time of hearing of this Revision Application, Mr. Vora, for the petitioner, submitted that looking to the evidence on record, it cannot be said that the defendant was in arrears of rent or was negligent in payment of rent. Mr.Vora has argued following points :-

(1) That the plaintiff is not the owner of the suit premises and, therefore, the plaintiff cannot sue without joining the original Gusai Panch as co-plaintiff in the suit because the plaintiff was merely given limited right to collect the rent from the defendant;

(2) That the suit notice of demand is illegal because a composite notice of demand is given for both the shops and Wada even though both the premises are separately rented premises and, therefore, no composite notice could have been given, demanding the rent jointly for both the shops in one notice;

(3) He has not given specific details regarding amount of arrears of each of the shops;

(4) In response to the demand notice, he paid Rs.500/-, which was accepted by the plaintiff and, therefore, in view of such acceptance, the defendant was not in arrears of rent for more than six months and, therefore, the provisions of Section 12(3)(a) of the Bombay Rent Act were not attracted and that before filing of the suit, even rest of the amount was also sent by him, which was refused by the plaintiff. So, there was no cause of action for the plaintiff to file the present suit; and

(5) That the defendant had paid the entire amount of rent regularly before the courts below and, therefore, even if it is held that the suit was maintainable, then also he was entitled to protection under Section 12(3)(b) of the Bombay Rent Act.

8. So far as the first point regarding ownership of the suit premises is concerned, it is not in dispute that the premises in question belongs to Gusai Panch Trust. Aforesaid Trust had given the premises, i.e. two shops in question, to the defendant as a tenant. Said Gusai Panch was the landlord of the petitioner-tenant and the petitioner was also paying rent to said Gusai Panch Trust. Subsequently, aforesaid Gusai Panch Trust, by an agreement at Exhibit 81, gave the said premises on lease to the present plaintiff-Trust. The entire Wada land, which includes the present rented premises also, was given by the said Gusai Panch to the present plaintiff. It is not the case of the present plaintiff that the aforesaid premises was purchased by the Trust. Therefore, present plaintiff has not got any proprietary right over the suit property. As a matter of fact, there was already a subsisting lease of the present defendant and in spite of that, the original owner created further lease in favour of the present plaintiff. In my view, therefore, when one lease was already subsisting, it was not open for the owner/landlord to create another lease of the same property unless earlier lease is extinguished or terminated in a lawful manner. When the present defendant was already occupying the premises as a tenant, the original landlord could not have created another lease of the same property. However, by virtue of the aforesaid agreement, Exhibit 81, the petitioner tenant started paying the rent to the present plaintiff and the present plaintiff was collecting rent from various tenants, and the original landlord also asked the present petitioner-tenant to pay the rent to the plaintiff at the rate of Rs.45/- for shop No.10 and Rs.10/- for shop No.11. In view of the same, it cannot be said that the plaintiff has got any ownership right over the suit property. The plaintiff-Trust, therefore, not being the owner, could not have filed the suit for eviction, treating itself as owner of the suit premises. The status of the plaintiff can be said to be of only a rent collector on behalf of original owner. It is not the say of the plaintiff that the Trust was instructed by the original owner to file a suit for eviction on behalf of the original owner. The plaintiffs have also not filed the suit as a rent collector, but the suit has been filed on the basis of ownership. In this background, it was necessary for the plaintiff to join the original owner as co-plaintiff in the suit. There is nothing on record to show that any consent was given by the said Gusai Panch to the present plaintiff for filing the suit. The Trustees could not have filed the suit, treating themselves as the owners of the suit property. At this stage, reference is also required to be made to one

agreement at Exhibit 83 between the owner Gusai Panch and the present plaintiff-Trust. In clause 6 of the Agreement, it has been provided that lessor Gusai Panch has given possession of the entire wada to the lessee (present plaintiff). In the whole of the wada, there are various tenants of the lessor and the lessee has to obtain possession from the said tenants before giving possession to the lessee and that is not possible that a rent note should be got executed from the tenants in favour of the present lessee. It is not in dispute that no rent note has been executed by the present petitioner in favour of the present plaintiff. In view of the aforesaid position, the plaintiff had no independent right to file a suit for recovery of possession of the suit premises / shops when the plaintiff was not authorized to do so by the original plaintiff. Mr.Mankad, however, has argued that when the plaintiff is having leasehold right of the original owner, the plaintiff was entitled to recover possession on the ground of arrears of rent. It is not possible to accept the argument firstly because the suit is not filed on that basis. The suit is also not filed as a rent collector and once there was subsisting lease agreement in favour of the present defendant, present premises could not have been subjected to another lease by the original owner. The present plaintiff cannot be said to have acquired any proprietary right in the suit property. As stated earlier, only limited power of collecting rent was given to the plaintiff. The plaintiff, therefore, having no title over the suit property, could not have filed the suit for possession. The plaintiff is neither the owner nor co-owners of the suit premises. Therefore, the suit filed by the present plaintiff was not maintainable as the real owner was not joined in the suit.

9. Mr.Vora pointed out that subsequently, there was dispute between Gusai Panch and the present plaintiff regarding this wada land in question and Civil Suit No.1 of 1977 was filed before the Charity Commissioner, Kutch at Bhuj under Section 50 of the Bombay Public Trusts Act. The Charity Commissioner passed an order on 31.3.1982 on the ground that the lease dated 29.10.1976 Exhibit 81 is null and void and, therefore, permanent letting by defendant No.1 Govindgar, who was the trustee of Gusai Panch, to the present plaintiff Trust, was illegal. Aforesaid judgment of the Charity Commissioner was challenged before the District Court in appeal and the same was also dismissed by the learned District Judge. Mr.Mankad, however, informed that appeal against the said judgment is pending in the High Court. In any case,

without even going to the aforesaid question, which is argued on the basis of subsequent event, even otherwise in view of what is stated in earlier part of this judgment, this revision application is required to be allowed. So far as the second contention of Mr.Vora regarding not giving specific particulars in the demand notice regarding arrears of rent qua each of the shops is concerned, it is required to be noted that as per Exhibit 83, the plaintiff has not quantified the rent regarding each of the shops, i.e. shop Nos.10 and 11. There is a separate tenancy regarding each shop, i.e. shop Nos. 10 and 11. In that view of the matter, such a composite notice could not have been issued. Mr. Mankad has further argued that demand of Rs.62/- can be considered as demand for both the shops without bifurcating the amount regarding each of the two shops. Mr.Vora has, however, argued that looking to the payment of rent, he has paid the entire amount of rent at the rate of Rs.45/p.m. and that would cover arrears of at least one of the shops. Mr.Vora has relied upon the judgment of this Court, reported in 18 G.L.R. 508, wherein this Court has taken the view that when there are two tenancies in favour of the same tenants, separate particulars must be given in respect of each tenancy if composite notice is given. In the instant case, in the notice, no particulars of the amount of arrears regarding each of the shops are given. In that view of the matter, I am of the opinion that the composite notice without giving particulars regarding arrears of rent regarding each tenancy is bad in law. Notice of demand should be precise and clear. Aforesaid contention of Mr.Vora is also required to be accepted. It was thereafter argued by Mr.Vora that in response to the suit notice, he had already sent Rs.520/- to the plaintiff towards the arrears of rent. The landlord has accepted the said amount without prejudice to his right, as, according to the landlord, aforesaid amount was not the full amount of arrears. However, when the landlord has accepted the amount of Rs.500/-, rest of the amount of arrears would be less than that of six months. This Court has taken a view in 15 G.L.R. 310 that in a case where after serving the demand notice, if the tenant has paid part of the rent and if the landlord has accepted that part of the rent, arrears of the rent reduces to less than six months. In that view of the matter also, the case would be governed by Section 12(3)(b) of the Rent Act. It is submitted by Mr.Vora that on the date of issue, the entire arrears amount was paid by the tenant and thereafter, he regularly deposited the arrears of rent and, therefore, he was required to be protected under Section 12(3)(b). Mr.Mankad has not pointed out anything

contrary to this. Therefore, even if it is assumed that the landlord was entitled to file the present suit, the defendant is required to be protected under Section 12(3)(b) of the Act.

10. In view of what is stated above, the C.R.A. is allowed and the decree passed by the courts below is set aside. The suit for possession stands dismissed. Rule is made absolute. No order as to costs.

31st March, 2000 (P.B. Majmudar, J.)

(apj)